



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**OCT 14 2008**

Mr. David Wilson, Bureau Chief  
South Carolina Department of Health  
and Environmental Control  
Water Pollution Control  
2600 Bull Street  
Columbia, South Carolina 29201

Dear Mr. Wilson:

The intent of this letter is to clarify the process for obtaining approval of revisions to state NPDES programs. Regulations pertaining to program revision at 40 C.F.R. §123.62 provide that a proposed revision of a state program shall be accomplished by the state submitting "a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances."

Informal Reviews and Approvals Are Not Sufficient

While the basic requirements for seeking approval of proposed program revisions are clear, EPA is concerned that the informal nature of many Region to state communications creates uncertainty as to when a proposed revision is being formally submitted for EPA approval. For example, it is common for revisions contemplated by state legislatures or by state environmental agencies to be submitted informally via email for the review of Regional staff. This can occur at various stages of rule or legislation development and may involve early drafts of proposed revisions. Further, the informal comments made by EPA staff on early versions of revisions under consideration may not reflect full vetting within the Agency or any determination as to whether the proposed revision is substantial. EPA wants to ensure that states do not interpret informal communications to be a substitute for the need to submit, formally, program revisions for EPA approval.

EPA Requires Formal Requests to Approve Program Revisions

EPA will not treat any communication regarding proposed revisions to a state NPDES Program to be a formal request for EPA approval until the proposed revision is described in a letter to the Regional Administrator requesting that EPA approve the proposed program revision.

The request for approval must be accompanied, at a minimum, by an Attorney General's (or equivalent official) statement confirming that the proposed program revisions have been duly adopted under state law and explaining how the proposed revisions are consistent with relevant Clean Water Act requirements.

Upon receipt of the formal request, Region 4's staff will review the request for completeness. If we determine that a modified program description, MOA or other documents or information are necessary to enable the Region to complete its review, you will receive a letter from me stating such.

Once EPA receives a complete, formal request for approval EPA then is required to determine if the proposed program revision is substantial. When the proposed revision is substantial EPA must issue public notice and provide an opportunity to comment for a period of at least thirty (30) days. The public notice summarizes the proposed revisions and provides for the opportunity to request a public hearing.

EPA encourages states to continue to share proposed revisions with Regional staff prior to adoption by state agencies or legislatures. This practice facilitates the early identification of issues at a stage when legislative and regulatory bodies can more easily address such issues. However, the formal review and approval by EPA, and the determination of whether a proposed revision is substantial and subject to public comment, will not occur until the formal written request to the Regional Administrator is received.

#### Required and Other Substantial Program Revisions Should Be Submitted Promptly

The EPA regulations on program revisions require that, when a program revision is necessary in order to conform with new or revised federal regulations, the state must revise its program within one (1) year of promulgation of the new or revised federal regulations, unless the State must amend or enact a statute to make the required revision, in which case such revision shall take place within two (2) years.

Because revisions to state NPDES permit programs are not effective until they are approved by EPA, you should *promptly* forward all required proposed revisions and all other substantial revisions (e.g., transfer of NPDES authority to a new state agency or a revision that may not be consistent with Clean Water Act requirements) to the Regional Administrator for formal review.

#### Other Proposed Program Revisions May Be Submitted Periodically

Some proposed revisions are not required by federal regulations and you have more flexibility as to when such proposed revisions are formally submitted to EPA for approval.

In order to conserve time and resources at both the state and Regional levels, you may consider a periodic submittal of proposed program revisions that captures multiple revisions that will be or have been adopted over a period of time. I recommend that you submit proposed program revisions (if any) for EPA approval at a minimum frequency of every two years, beginning on March 30, 2009. Delays in seeking program approval can lead to confusion as to whether the program being implemented under state law is consistent with the program that has been approved by EPA. I would also appreciate if states would notify us at this interval if no program revisions have been adopted.

I hope this clarification will eliminate any uncertainty as to the process for obtaining approval of NPDES program revisions. Please have your staff contact Mark Nuhfer at [Nuhfer.mark@epa.gov](mailto:Nuhfer.mark@epa.gov) or 404-562-9390 if there are comments or questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', written over a horizontal line.

James D. Giattina

Director

Water Management Division